

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Administration of the North American) CC Docket No. 92-237
Numbering Plan Carrier Identification)
Codes (CICs))

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REPLY COMMENTS OF U S WEST, INC.

I. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") supports those filing parties that generally support the North American Numbering Council's ("NANC") submission to the Federal Communications Commission ("FCC" or "Commission") in February, 1998¹ and who oppose the promulgation of formal Commission rules regarding Carrier

¹ See Letter to A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, from Alan C. Hasselwander, Chairman, North American Numbering Council, dated February 19, 1998. This correspondence attached a copy of the CIC Ad Hoc Working Group Report. See "Report and Recommendations of the CIC Ad Hoc Working Group to the North American Numbering Council (NANC) Regarding Use and Assignment of Carrier Identification Codes (CICs)," ("Ad Hoc Working Group Report") presented to Alan C. Hasselwander, NANC Chairman *via* letter from Co-Chairs Peter Guggina and Paul Hart, dated February 6, 1998.

A subsequent letter was sent to Mr. Metzger from Mr. Hasselwander, advising that the February 19th correspondence had incorrectly stated that the NANC recommendations were "unanimously adopted" and advising that there was one dissent from the Organization for the Promotion and Advancement of Small Telephone Companies ("OPASTCO"). Letter to A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, from Alan C. Hasselwander, Chairman, North American Numbering Council, dated February 25, 1998.

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Identification Code ("CIC") assignments.² In this Reply, we confine our comments to addressing two matters raised by commenting parties that we do not support.³

First, we address AT&T's proposal that the current definition of the term "entity" incorporated in the CIC Guidelines be retained.⁴ We believe history has proven the definition to be incomprehensively vague for administrative purposes.

² Comments filed Mar. 6, 1998 include such parties as Ameritech at 1-3, 6-7 (and supporting the NANC's proposal that two aspects of the CIC Guidelines be codified, specifically those dealing with usage reporting and reclamation requirements); AT&T Corp. ("AT&T") at 2; BellSouth Corporation ("BellSouth") at 2-3, 5 (also supporting the NANC proposed codifications and proposing a "minority" position regarding CIC assignments in the context of mergers and acquisitions); GTE Service Corporation ("GTE") at 7-9 (proposing a CIC limit of 10 CICs per entity, rather than the 6 proposed by the NANC, and supporting the "minority" position regarding CICs in a merger/acquisition context); IXC Long Distance, Inc. ("IXC LD") at 1, 5-6; MCI Telecommunications Corporation ("MCI") (styled as "Reply Comments") at 1, 3, 10; PrimeCo Personal Communications, L.P. ("PrimeCo") supports the NANC proposal regarding the definition of the term "entity," and does not address other aspects of the proposal. See PrimeCo, generally.

The reason U S WEST frames our support as a "general" one is because we are not convinced that any aspect of the current CIC Guidelines needs to be codified. See U S WEST Comments at n.7. Furthermore, we disagree with those commentators who support the NANC recommendations, for the most part, but propose a minority position regarding the treatment of CICs acquired through a merger or acquisition (i.e., BellSouth and GTE).

³ In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), CC Docket No. 92-237, Further Notice of Proposed Rulemaking and Order, FCC 97-364, rel. Oct. 9, 1997 ("FNPRM"). Pursuant to the requirements of paragraph 59 of the FNPRM, U S WEST's Reply Comments respond to comments filed pertaining to Section III., subsections B. and C.

⁴ See AT&T at 9. And compare BellSouth (at 4) who believes that the definition of "entity" might be better addressed and resolved within the Industry Numbering Committee ("INC"). U S WEST appreciates that, in the future, the definition of "entity" might need to be revised or modified. At that point, it is probably appropriate to begin the process of re-definition with the INC. However, for purposes of resolving this issue within the context of the current proceeding, we believe the NANC recommendation represents the correct resolution. Therefore, we would not support sending the matter to the INC.

Thus, we oppose AT&T's position, one which it alone advances.

Second, we address the minority position (reported out by the Ad Hoc Working Group) regarding CICs acquired through a merger or acquisition. BellSouth proposes that such CICs count toward an entity's total of six codes, such that if the "entity" remaining after the merger or acquisition has more than six codes, no further codes should be assigned to that "entity."⁵ On the other hand, GTE proposes that the codes be aggregated after the merger or acquisition and that a quantity of codes in excess of .05% of the industry resource be prohibited (or stated another way, that an absolute maximum of 50 codes per entity be established).⁶ We oppose the minority position, whether crafted as proposed by BellSouth or GTE. That position is based entirely on speculation and conjecture regarding possible harm to the industry from "excessive" CICs being controlled by a single entity. While the concern is speculative, the fact that CICs associated with mergers and acquisitions will undoubtedly be "in use" and that commercial and marketplace harm could attend their mandatory reversion to the CIC administrator is inappropriately dismissed.

⁵ BellSouth at 3, 5. Ameritech (at n.1) does not support, necessarily, the retention of CICs in a merger and acquisition situation, but believes that such issues should be referred to the INC for full analysis. Similar to our comment immediately above, we believe the issue of how CICs should be treated in the context of a merger and acquisition has been appropriately resolved in the NANC recommendation. Thus, we see no legitimate reason to refer this matter to the INC, at this time.

⁶ GTE at 8-9.

II. SPECIFICS OF U S WEST'S OPPOSITION

A. Opposition To AT&T's Proposal Regarding The Definition Of "Entity"

U S WEST opposes AT&T's proposal to retain the current definition of the word "entity."⁷ Past experience has demonstrated that the current definition is entirely unworkable with respect to the reasonable administration of CIC assignments. Unless the term "control" is defined by some objective, measurable standard, number administration entities are constantly caught up in factual, case-by-case decisions involving the matter of "control," within a variety of flexible and fluid business or organizational structures.⁸

While AT&T is correct that "corporate relationships can be intricate and therefore reviewing ownership interests can be a complex task,"⁹ it is equally true that the parties to those relationships know whether an interest of 50% or more has been acquired -- the predicate fact for finding "control" under the proposed NANC definition. Those parties to the relationship can then report out the "facts" of the relationship. However, no similar predicate fact is incorporated into the existing definition, rendering parties in the relationships as well as those administering CICs with the task of determining on a case-by-case basis (sometimes in a

⁷ AT&T at 9.

⁸ We disagree with AT&T's assertions that "the existing . . . definition can be applied easily to the well known participants in the communications industry" and that even the proposed NANC definition might "be difficult to apply to others." Id. at 9-10.

⁹ Id. at 10.

contentious context) whether "control" does or does not exist.¹⁰

Like those arguing against the permissible aggregation of CICs in the context of mergers and acquisitions (discussed below), AT&T's "support" for its position -- and for its opposition to the NANC proposed definition of "entity" -- is grounded in nothing more than pure speculation¹¹ and some misguided notion that carrier efficiencies and quality customer service should be sacrificed¹² to some artificial restraint on a resource that is expanding not contracting.

As stated in our opening comments, U S WEST supports the NANC recommendation with respect to the definition of the term "entity." We also support

¹⁰ FNPRM ¶ 24. And see MCI at 5-6 (observing that the current use of the term "control" in the CIC Guidelines is "relatively vague," yet represents the "linchpin" for determining affiliation).

¹¹ The proposed NANC definition of 'entity' would, in AT&T's view, "allow for gamesmanship regarding the use of codes because far less than a 50 percent equity interest *could* enable a firm to both obtain 'control' and derive 'economic benefits' from the use of CIC codes." AT&T at 10 (italics added).

¹² For example, contrary to most other commentors, AT&T asserts that denying a CIC to an affiliate who might be in a line of business different from the carrier entity that holds a CIC "would not disadvantage the affiliate nor reduce competition." AT&T at 11. This statement is in stark contrast to those of other commentors who argue that allowing CICs to be used to differentiate lines of business is appropriate and may advance competition overall. See, e.g., IXC LD at 2, 4 (making its comments primarily within the context of the merger/acquisition issue, although they have broader "pro-competition" application and noting that "CIC administration policy should not interfere with or otherwise influence the business decisions of telecommunications carriers."). And see AT&T's own later arguments in its Comments at 14-15 (quoting from Bellcore with approval that "a failure to make [CIC] assignments could adversely affect the development of new services" and observing that an expansion of the CIC-per-entity limit "will serve to promote competition among telecommunications service providers by enabling them to provide new and innovative services using CICs"). AT&T's motivation with respect to its support for the existing definition of "entity" seems to be some speculative fear of "discriminatory conduct." Id. at 11, n.2. The Commission should reject AT&T's arguments as contrary to the weight of the evidence.

the PrimeCo position (fairly incorporated into the NANC recommendations and the CIC Notice,¹³ we believe) that an applicant should be able to approach the Commission for an additional CIC where the definition of the term "entity" somehow operates a hardship on the commercial operations of carriers (such as in joint ventures).

**B. Opposition To The Minority Position Regarding CIC Aggregation
In The Context Of Merger Or Acquisition**

With respect to the BellSouth/GTE opposition to the retention of CICs acquired through merger and acquisition by the ultimate "entity," U S WEST believes the entire matter is simply too hypothetical at this point to warrant a "principle" contrary to that proposed by the NANC.¹⁴ BellSouth's statement of the issue highlights the speculative nature of the "problem" in the first instance. It states that "[t]here is no numbering principle promulgated by the Commission or any other body that can justify a rule denying carriers access to a numbering resource while other carriers have many times the number of resources gained through mergers and acquisitions."¹⁵

Contrary to BellSouth's assertion, there is no rule "denying carriers access to a numbering resource." Under the NANC proposal, all carriers would get up to six

¹³ In the Matter of Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, 9 FCC Rcd. 2068 (1994) ("CIC Notice").

¹⁴ We also support IXC LD's position that the term "merger and acquisition" not be so narrowly defined so as to preclude purchases of less than entire businesses. See IXC LD at 6-8.

¹⁵ BellSouth at 5.

CICs. Additionally, there is no outright "denial" of codes beyond that.¹⁶ Carriers in need of CICs in excess of six can present their case to the Commission and, undoubtedly, will secure the necessary CIC(s).¹⁷

Unlike the "speculative" fact patterns outlined by BellSouth is the real fact that entities that merge or acquire other companies will actually be using the CICs that have been assigned to them.¹⁸ BellSouth does not adequately address why that actual usage should be interrupted in the name of some "theoretical" inequity that

¹⁶ BellSouth argues that it is "inequitable that one carrier could have hundreds of CIC codes, acquired through mergers and acquisitions, and still be able to apply for up to six CIC codes, while other carriers could never obtain more than six codes." Id. Again, this "fact" situation is entirely theoretical. No one knows that a carrier with hundreds of codes would apply for six more. And, if such were to occur, U S WEST has no doubt that there would be some "burden" placed on the carrier to demonstrate why an additional code was necessary (BellSouth's proposed resolution of such a request, id.). Additionally, there is no certainty that a carrier in need of a seventh code "could never obtain" it, as BellSouth asserts. Thus, the "harm" associated with the NANC recommendation is not apparent.

¹⁷ Fundamentally, the NANC proposal sends the requesting carrier to the Commission, rather than to an industry forum, so that competitors are not "judging" the propriety of the request. Such is deemed more appropriately addressed directly by the Commission. And see IXC LD at n.3.

¹⁸ See, e.g., MCI at 8 (noting that "gamesmanship" will not be a part of this process, since there is little incentive for any carrier to request a CIC assignment unless they will actually be using the CIC; and that consolidation of CICs -- once in use -- can be costly, difficult, burdensome and time-consuming). And see IXC LD at 3-4 (noting that CICs aggregated through merger and acquisition will already be in use and employed in the provision of services to customers and that transferring customers to different CICs would be very expensive). But see GTE at 9 (suggesting that carriers might acquire other carriers just to get their CICs).

U S WEST agrees with MCI that the concerns raised by GTE are more likely to occur in an environment of severe conservationism than one of abundant supply. Compare MCI at 5 (noting that unusual business transactions are more likely to occur in environments where the business needs to evade the harsh consequences of the rule than in one where there is sufficient supply to meet current and substantial future needs).

might never do any actual harm to any other carrier.

Nor does GTE articulate facts that would allow for a meaningful assessment of "competitive imbalance" regarding CIC assignment or usage in the context of a merger or acquisition.¹⁹ Until such harm or competitive imbalance is at least reasonably predictable (as opposed to speculative), there seems to be no good reason to force a change in the *status quo* as it is realized through a merger or acquisition or to place an absolute limit on the number of CICs that can be assigned to any entity.²⁰

III. CONCLUSION

U S WEST remains supportive of the NANC Report to the Commission. We believe that no party has demonstrated sound grounds for rejecting any of its proposed recommendations.

We particularly believe that, with respect to the matters on which the NANC provided a recommendation, the recommendation is generally more pro-competitive and commercially responsive than are the proposals outlined by the Commission in its CIC Notice. Yet, the NANC recommendations do no harm to commerce, the public interest or to number administration or appropriate conservation. Indeed, just the opposite is true. The recommendations are balanced and appropriately

¹⁹ GTE at 9.

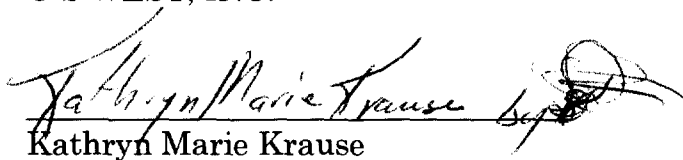
²⁰ See, e.g., MCI at 2 (noting that conservation measures are not particularly necessary until there is some demonstrated likelihood that there may be a shortage of CICs -- something which might never occur).

prudent without being overly or unduly conservative. For these reasons, we urge their adoption.

Respectfully submitted,

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April 3, 1998

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 3rd day of April, 1998, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served, via first class United States mail, postage pre-paid, upon the persons listed on the attached service list.



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